

Jones does not disclose, teach or suggest the claimed transport device. Jones teaches no structure in Fig. 14 for transporting lancets. The Examiner suggests that the human hand can be considered to be a “transport device” for the dispenser shown in Fig. 14. (Office Action, Page 2). Claim 22 particularly recites that the lancet magazine comprises a transport device. Therefore, the claimed transport device is included in the lancet magazine. The human hand is not included in the dispenser of Jones Fig. 14. Therefore, the Examiner’s argument relating to claim 14 is completely without merit.

The Examiner also contends that Jones Fig. 15 shows a spring that can act as the claimed transport device. (Office Action, Page 2). Fig. 15 of Jones is not relevant because it does not teach a lancet magazine as claimed. The claimed lancet magazine is “for storing a plurality of lancets.” Fig. 15 of Jones shows “a dispenser for the **crimp-on anchors**,” not a dispenser for needle and anchor assemblies or a dispenser for needles. (Col. 2 lines 46-47) (emphasis added). The crimp-on anchors are not lancets, therefore, the device of Fig. 15 is not a dispenser for lancets. The anchors 14 freely slide along the rod 62 within the dispenser, as shown in Fig. 17. See Col. 6, lines 27-28. It is impossible to include any needles in the dispenser of Fig. 15 because the anchors are placed over the rod so that the rod runs through a hole in the middle of the anchor. Since spring 63 does not transport any lancets, it cannot be the transport device of claim 22.

Since claims 23-25, 27-30, 43 and 46-50, as amended, all depend, directly or indirectly, from independent claim 22, the additional limitations of these claims do not make them unpatentable. See, e.g., MPEP §2143.03, at 2100-126 (Rev. August 2001) citing In re Fine, 837 F.2d 1071 (Fed. Cir. 1988)).

Claim 52 has been canceled without prejudice or disclaimer of the subject matter recited therein.

For at least these reasons, claims 22-25, 27-30, 43 and 46-50 are patentable over Jones. Applicants respectfully request that the rejection be withdrawn and that such claims be allowed.

Claim Rejections Under 35 U.S.C. § 102(e)

Claims 22, 23, 27-29, 31, 43, 50 and 51 were rejected under 35 U.S.C. § 102(e) as being anticipated by Nguyen et al. (5,829,589) ("Nguyen '589").

Applicants maintain that Nguyen '589's purported "transport device" 30 is merely a container which stores pen needle assemblies 100. Nguyen '589 only teaches that cover 20 rotates with respect to container 30 to move slot 21 over a loaded cavity 31 of container 30. Col. 4 lines 15-16. Cover 20 is rotatably mounted on container 30. Col. 4 line 13. Cover 20, not container 30, rotates to find a loaded cavity 31. See e.g., Col. 4, lines 24-25, lines 33-35, line 42, lines 50-53. Nguyen '589 does not mention anywhere the possibility of rotating container 30 to transport lancets.

Nonetheless, Applicants have amended claim 22 to clarify that the transport device is a movable part inside the claimed lancet magazine, which moves while the body of the lancet magazine remains stationary. Specifically, the claimed transport device is adapted to "travel along a guide groove within the lancet magazine to transport lancets." Nguyen '589 does not disclose, teach or suggest any structure that travels within a lancet magazine to transport lancets.

The claimed transport device is a structural limitation not disclosed, taught or suggested by Nguyen '589 and the rationale of Ex Parte Masham is inapplicable. For at least these reasons, Nguyen '589 does not anticipate independent claim 22 nor any of claims 23, 27-29, 31, 43, 50 or 51 depending therefrom. Applicants respectfully request that the rejection be withdrawn and such claims be allowed.

Final Remarks

For at least the reasons stated above, all of the pending claims 22-32 and 43-52 of the above-noted application, as amended, are believed to be in condition for allowance. Applicants respectfully request that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is asked to call Applicants' attorney, Christine E. Mayewski Orich at 317-684-5414, or James A. Coles at 317-684-5251, to address any outstanding issues in order to expedite the prosecution of this application for all parties.

If necessary, Applicants request that this Amendment be considered a request for an extension of time for a time appropriate for the response to be timely filed. Applicants request that any required fees needed beyond those submitted with this Response be charged to the account of Bose McKinney & Evans, Deposit Account No. 02-3223.

Respectfully submitted,

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RESPONSE TO 11/29/2002 OFFICE ACTION**

APPENDIX

MARKED-UP VERSION OF CLAIMS

In the Claims:

Please amend claims 22, 26, 31, 32, 44, 50, 51, and 52 as follows:

22. (Thrice Amended) A system that is suitable for collecting bodily fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet, the lancet including a needle, and

a lancet magazine for storing a plurality of lancets, the lancet magazine comprising

a transport device adapted to travel along a guide groove within the lancet magazine to transport lancets and

an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine.

26. (Twice Amended) The system of claim 22, wherein [A system that is suitable for collecting a body fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet;

a lancet magazine for storing a plurality of lancets, the lancet magazine comprising a transport device adapted to transport lancets and an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine; and]

a second opening through which protective sheaths of the lancets can be ejected is located in the lancet magazine in addition to the opening into which the lancing

device can be inserted to remove a single lancet from the lancet magazine.

31. (Twice Amended) The system of claim 22, wherein [A system that is suitable for collecting a body fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet;
a lancet magazine for storing a plurality of lancets, the lancet magazine comprising a transport device adapted to transport lancets and an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine; and]
a pin is located in the opening of the lancet magazine into which the lancing device can be inserted to remove a single lancet from the lancet magazine, [wherein] and the pin engages in a guide groove in the tip of the lancing device which is inserted into said opening and thus causes a rotation of the lancing device or a part of the lancing device about its longitudinal axis.

32. (Twice Amended) The system of claim 22, wherein [A system that is suitable for collecting a body fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet;
a lancet magazine for storing a plurality of lancets, the lancet magazine comprising a transport device adapted to transport lancets and an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine;]
a guide groove is located in the opening of the lancet magazine into which the lancing device can be inserted to remove a single lancet from the lancet magazine; and
a pin is located in the tip of the lancing device which is inserted into said opening so that the pin engages the guide groove and thus causes a rotation of the lancing device or a part of the lancing device about its longitudinal axis.

44. (Twice Amended) The system of claim 33, further comprising [A

system that is suitable for collecting a body fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet and

a lancet magazine for storing a plurality of lancets, the lancet magazine comprising

a transport device adapted to transport lancets and

an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine, and

each of the plurality of lancets in the lancet magazine comprising a sterile tip and] a protective sheath surrounding the sterile tip.

51. (Twice Amended) The system of claim 22, [A system that is suitable for

collecting a body fluid from a region of the body of a person to be examined, the system comprising:

a lancing device which is suitable for holding a lancet and

a lancet magazine for storing a plurality of lancets, the lancet magazine comprising

a transport device adapted to transport lancets

an opening into which the lancing device can be inserted to remove an individual lancet from the lancet magazine, and]

wherein each of the plurality of lancets [comprising] comprises a pin configured to prevent the lancet from being displaced in the lancet magazine when the lancing device is inserted.